

REMARKS

For the record, page 4 incorporates by reference U.S. Patent No.

5 5,611,052 issued to Dykstra et al. on Mar. 11, 1997, U. S. Patent No. 5,797,133 issued to Jones et al. on Aug. 18, 1998, U. S. Patent No. 5,832,462 issued to Midoikawa et al. on Nov. 3, 1998, U. S. Patent No. 5,878,4033 issued to Defrancesco et al. on Mar. 2, 1998, U.S. Pat. No. 5,966,699 issued to Zandi on Oct. 12, 1999 and U.S. Patent No. 5,995,947 issued to Fraser et al. on Nov. 30, 1999.

10 These incorporations are in accordance with MPEP 2163.07 (b). This states that [I]nstead of repeating some information contained in another document, an application may attempt to incorporate the content of another document or part thereof by reference to the document in the text of the specification. The information incorporated is as much a part of the application as filed as if the text was repeated in the application, and
15 should be treated as part of the text of the application as filed. Replacing the identified material incorporated by reference with the actual text is not new matter. Applicant asserts the position that this part of the MPEP is binding on the Examiner as a representative of the Office. Accordingly, applicant respectfully requests that the assertion on Page 2 of the Office Action rejecting Claims 6-10 under 35 U.S.C. 112,
20 first paragraph, as failing to comply with the written description requirement be withdrawn. See also, MPEP 608.01(p) and 37 CFR 1.57(c). The incorporated material consists of actual text recited in United States patents.

25

SUPPORT FOR REQUEST TO WITHDRAW THE REJECTION
PURSUANT TO §112, ¶ ONE

Especially relevant to rebutting the rejection under §112, ¶ one is United States

5 Patent 5,995,947 that issued to Fraser, et al. November 30, 1999. This patent teaches an interactive mortgage and loan information and real-time trading method and system for trading loans in real time by making loan applications, such as home mortgage loan applications, and placing them up for bid by a plurality of potential lenders. A transaction server maintains a database of pending loan applications and their statuses;

10 each party to the loan can search and modify that database consistent with their role in the transaction, by requests to the server from a client device identified with their role. Brokers at a broker station can add loan applications, can review the status of loan applications entered by that broker, are notified of lender's bids on their loans, and can accept bids by lenders. Lenders at a lender station

15 can search the database for particular desired types of loans, can sort selected loans by particular desired criteria, can bid on loan applications, and are notified when their bids are accepted. Broker stations, lender stations, and the transaction server can be coupled using multiple access methods, including Internet, Intranet, or dial-up or leased communication lines.

20 In the incorporated invention summary Fraser et al declares, "The transaction server provides exogenous information which might be of interest to lenders and brokers for pricing loans, such as public bond market and other interest rate market news..." Fraser next uses the phrase fixed interest rate in the DESCRIPTION OF THE

PREFERRED EMBODIMENT at the sub-section entitled, "Transaction Server" at the fifth paragraph in referring to the loan type. This incorporated by reference patent is replete with interchanged references to lending rates. For example, the Examiner is referred to col. 10, lines 1-5 and col. 14, lines 33-35.

5 Applicant's specification also incorporates Jones et al. cited above for teaching a prior art method for automatically determining the approval status of a potential borrower. Claim 17 of Jones recites the step of transmitting current interest rates of said lender from said control location to a remote location. There is no teaching of bidding prices in Jones et al. However, under the summary incorporated by this applicant by
10 reference Jones teaches providing information regarding the lender's current interest rates to a remote location such as the office of the dealer. Col. 3, lines 22-26.

b. Remarks

**TRAVERSAL OF THE FINDING THAT DYKSTRA ET AL. ANTICIPATES
CLAIMS 6-19 PURSUANT TO 35 USC 102 (b)**

It is plain error that claims 6-19 were rejected by the Examiner under 35 U.S.C. 102(b) as being anticipated by Dykstra et al (US PAT. 5,611,052) hereinafter Dykstra. The Examiner has attempted to equate a prior art reference that partially automates credit worthiness processing for a loan application of the merchant -purchaser level of commercial transactions with a bid-ask transaction automation system between institutions, a process made possible using a third party auctioneer institution wherein the whole of the process is automated. This difference is apparent discernable to anyone working in the banking industry at the bank to bank institutional level.

Dykstra discloses an automated system but not one for matching borrowers at a specified interest rate to savers at a specified interest rate. A party not yet qualified and vetted to borrow is not a borrower in the context of the subject application. A CPU 10 for determining credit worthiness as recited in Dykstra is not shown to conduct a savings and loan auction between a plurality of savers' *institutions* acting on behalf of a plurality of savers and a plurality of borrowers' *institutions* acting on behalf of pre-qualified borrowers for a plurality of pre-set amounts of offered principal, each offered principal being offered for one of a plurality of pre-set time periods via a funds auctioneer.

A substantial part of Dykstra, specifically columns 5 and 6, is selectively used and relied on by the Examiner to attempt an imperfect hindsight reconstruction of the elements of novel claims 6-19 using the applicant's independent claim 6 as a template for the reconstruction using un-equivalent parts of Dykstra.

Claim 6 recites a completely different process, to wit:

5 An automated system for matching borrowers to savers comprising an interconnected group of computers conducting a savings and loan auction between a plurality of savers' institutions acting on behalf of a plurality of savers and a plurality of borrowers' institutions acting on behalf of pre-qualified borrowers for a plurality of pre-set amounts of offered principal, each offered principal being offered for one of a plurality of pre-set time periods via a funds auctioneer, said system
10 further comprising:

(a) at least one of said group of computers being operated by said funds auctioneer;

(b) a computer network comprised of said interconnected group of computers;

15 (c) means for receiving an electronic savings deposit offer and ask rate from a prospective saver's institution over said computer network;

(d) means for receiving an electronic loan request and bid rate from a prospective borrower's institution over said computer network;

20 (e) means, located at said funds auctioneer, for electronically sorting, matching, and selecting electronic savings deposit offers and ask rates which match with electronic loan requests and bid rates to form a plurality of matches of bids and asks or transactions,

(f) means, operated by said funds auctioneer, for electronically confirming each said match of a bid and ask to each said saver's institution and each said borrower's institution which is a party to the matched bid and ask or transaction over said computer network;

25 (g) means, operated by said funds auctioneer, for electronically confirming each said match of a bid and ask to a clearing house bank and a surety, specifying each said saver's institution and each said borrower's institution, which is a party to the matched bid and ask or transaction, over said computer network;

30 (h) means, operated by said funds auctioneer, for electronically monitoring payments of principal and interest from each borrower's institution that is a party to a transaction via the clearing house bank to each saver's institution that is a party to the matched transaction;

35 (i) means for electronically issuing a negotiable certificate of deposit from the auctioneer to a saver via saver's institution and the clearinghouse bank;

40 (j) means for electronically redeeming and issuing notification of redemption of said auctioneer's negotiable certificate of deposit to the surety, the clearing house bank, the saver's institution, and the borrower's institution; and

(k) means, operated by said funds auctioneer, for electronically monitoring payments of principal and interest from each borrower's institution that is a party to a transaction via the clearing house bank to each saver's institution that is a party to the matched transaction.

5 Dykstra as recited in column 5, lines 6- 11 clearly and distinctly is not a fully automated system as recited and limited at the combined preamble and first element in applicant's claim 6. In Dykstra it is stated, "...Potential borrower can then take a copy of the facsimile approval to the lender for verification and sign the papers for the loan, or the lender may choose to purchase the financing contract for the borrower directly from the
10 merchant. The process [pursuant to the teachings of Dykstra] is then completed and terminates at step 124. If the loan is denied, steps 120 and 122 are bypassed and the [Dykstra] process terminates at step 124." It is abundantly clear in claim 6 that the process recited is "automatic" and performed "electronically" for pre-approved institutional participants (borrowers and lenders) on each side of the transaction. A potential borrower
15 does not physically transport any document nor need solicit any approval. Novel claims element (e) of the applicant's claim clearly and unambiguously recites a different process than that presented by Dykstra.

Applicant recites and claims the following distinctive process element, namely: "(e) means, located at said funds auctioneer, for electronically sorting, matching, and
20 selecting electronic savings deposit offers and ask rates which match with electronic loan requests and bid rates to form a plurality of matches of bids and asks or transactions;...". There is no approval contingency as required and claimed by Dykstra or physical transport of papers by a borrower. The process clearly described and claimed by the applicant is for institutions acting automatically for pre-approved
25 borrowers and savers in somewhat the same way as buyers and sellers of stocks on the stock exchanges.

In the Office Action dated September 14, 2010 finally rejecting applicant's Claims 6-19 as anticipated, the Examiner incorrectly recites that Dykstra anticipates applicant's claim limitation that the borrowers are "pre-qualified". No such teaching is evident in Dykstra. Without establishing this critical aspect or element of the applicant's invention, it is neither suggested, averred, recited nor taught by Dykstra. The rejection must fall and in actuality falls short of anticipation.

The institutions putting up offers and acting on behalf of borrowers cannot act and make acceptable executory offers if an approval sub-process is needed for the system to work. For Dykstra the approval is needed for its process to work. In the applicant's novel process claimed it is not needed. Moreover, the communication network and connection to the credit bureaus shown by Dykstra in Fig. 1 and use step recited in col. 5, lines 39 - 47 are eliminated by applicant's novel system and process recited in claims 6 - 19.

The direct lending CPU 10 in Fig. 1 of Dykstra referenced on page 3 of the Office Action as being equivalent to applicant's computer network operated by the funds auctioneer (Applicant's claim 6, element (a)) is incorrect because the element 10 is declared by Dykstra at col. 5, lines 39 - 50 as a CPU for requesting and processing a credit report which is evaluated later. The CPU 10 only determines automatically whether the credit report has been received then operated on by parsing, verifying, and formatting. Col. 5, lines 59 to Col. 6, lines 3. Also, see col. 6, lines 45-47.

The Dykstra reference in addition to not teaching the applicant's invention as now claimed actually teaches away from the level of automation of subject invention in light of recitations at col. 7, lines 34-42, to wit:

5 From there, the potential borrower can take (physical intervention
averred) his or her copy of the verification of the loan approval to the
lender, sign the papers, and obtain loan money or the lender may choose
to purchase the financing contract for borrower directly from the
merchant.

Clearly, applicant's system and method as claimed and described require only that an
institutional bid and ask to be matched by an auctioning institution is substantially and
patentably distinct from dealing with individuals or their acts in completing its novel
process.

10 The applicant argues vigorously that the prior art of record fails to disclose "interest
rate of an instrument," as recited in the claims. Contrary to the Examiner's initial finding,
the applicant's specification incorporates by reference several U. S. patents which provide
ample support for the claimed subject matter. The applicant's specification as originally
filed mentions the matching of bid and ask prices and by virtue of the incorporation by
15 reference of the Jones and Fraser U.S. patents the specification also recites that the matching
of bid and ask interest rates is equivalent to the bid and ask prices. See also,
Wikipedia.com, which teaches that it is public knowledge that in the context of borrowers
and lenders, bid and ask prices are the same as bid and ask interest rates.

20 **CONCLUSION**

Claims 6-19 recite and claim patentable subject matter and should be allowed by
the Examiner. The points used to reject these claims are not sustainable.

The pending Office Action allowed three months for response without a petition
25 for extension and fee. Applicant attempted to arrange a telephone conference to discuss
the averments in this amendment but snow storms and a personal event (the applicant's

prevented the undersigned from timely effectuating such a phone conference.

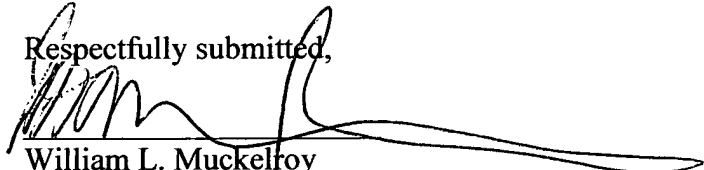
In light of these events, the applicant has authorized the undersigned to again attempt to resolve the issues raised in the outstanding Office Action and this amendment via a scheduled phone conference (subject to the Examiner's approval) but understands that the Examiner may elect not to consider this amendment. The undersigned has been authorized to attempt a phone conference with the Examiner as soon as feasible.

For the record, applicant understands, notwithstanding the arguments herein being proffered and the traversals recited, his right to appeal and/or file a request for continuing examination subject to the time limitations of 35 USC §133.

The undersigned wishes to thank the Examiner for the courtesies extended in the prior brief telephone contacts and his willingness to access the file and work/conference the case remotely.

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Respectfully submitted,


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Enclosures: Amendment E with Certificate of Mailing; Petition for Two-Month Extension with fee via fee payment authorization form.

FAX: Duplicate courtesy copy faxed to Examiner Oyebisi at 1-571-273-8300

cc: Bamacorp; Leo Kayser